



City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

**PERSONNEL BOARD
MINUTES OF THE MEETING OF MAY 17, 2013**

Attending:	Gabriel Paez	Chairperson
	Moj Khaghan Danial	Vice Chairperson
	Rosalie Pincus	Associate Member
	George Castell	Employee Member
	Sylvia Crespo-Tabak	Human Resources Director and City Liaison
	Donald M. Papy	Chief Deputy City Attorney
	Robert Rosenwald, Jr.	Senior Assistant City Attorney
Absent:	Christopher Diaz	Employee Member
	Evette Phillips	Employee Member

The Personnel Board meeting was called to order at 9:15 AM by Gabriel Paez, Chairperson.

Item 1: Approval of Minutes: February 8, 2013 Personnel Board Meeting.

Upon motion by Vice Chairperson Khaghan Danial, seconded by Associate Member Pincus, the minutes of the February 8, 2013, Personnel Board meeting were approved as written.

Item 2: Approval of Minutes: March 22, 2013 Personnel Board Meeting.

Upon motion by Vice Chairperson Khaghan Danial, seconded by Associate Member Pincus, the minutes of the March 22, 2013, Personnel Board meeting were approved as written.

Item 3: Classified Performance Evaluations: Review of Past Due Performance Evaluation Reports for Classified Employees.

The classified service late performance evaluations report, as of March 3, 2013, was reviewed. City Liaison Crespo-Tabak stated that management is being responsive when informed that performance evaluations for employees in their respective areas of responsibility are late.

Associate Member Pincus inquired whether the evaluations are associated with raises. City Liaison Crespo-Tabak stated that merit increases are currently available to employees covered by the Government Supervisors Association of Florida (GSAF) and American Federation of State, County and Municipal Employees (AFSCME) bargaining units. Merit increases for other classified employee groups are frozen.

Vice Chairperson Khaghan Danial inquired as to the cycle of performance evaluations. City Liaison Crespo-Tabak stated that the evaluation periods are based on employees' start dates or transfer/promotion dates. Vice Chairperson Khaghan Danial also inquired as to what was an acceptable percentage of late evaluations; she thought it should be at or about ten percent. City Liaison Crespo-Tabak stated the Human Resources Department would like to the

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percentage of late performance evaluations at no more than five. Employee Member Castell stated that sometimes employees change supervisors during the year and that may cause delays. Vice Chairperson Khaghan Danial requested that the Human Resources Department follow up regularly with department management when performance evaluations are overdue. City Liaison Crespo-Tabak reassured the Board the Human Resources Department would continue to work to reduce the number of past due performance evaluations.

Item 4: Update Regarding Legal Oversight Committee Meeting to Discuss Role and Duties of the Personnel Board.

City Liaison Crespo-Tabak stated that at a recently held Committee meeting, concerns related to employees leaving the classified service for the unclassified service yet maintaining rights to the classified position(s) were discussed. City Attorney staff advised the Committee members that the remedy to that issue was to amend the Personnel Rules. Chairperson Paez was present at the Oversight Committee meeting.

Chairperson Paez inquired about the Personnel Board vacancies. The City Clerk sent LTC No. 149-2013 regarding vacancies.

Item 5: Update from the Personnel Rules Revision Subcommittee.

Vice Chairperson Khaghan Danial stated that the subcommittee is reviewing the Personnel Rules. The delay in reporting to the full Board is related to the feedback from different sources, however, the subcommittee is about 90% done with the proposed revisions and is striving toward presenting a final draft to the Personnel Board in approximately 60 days.

Item 6: Open Forum Discussion.

Chairperson Paez opened the floor to open forum discussion.

Brian Gentles, Fire Department

Mr. Gentles approached to address the Personnel Board. Senior Assistant City Attorney Rosenwald recommended that the Personnel Board not hear Mr. Gentles' issue since the matter he wanted to discuss was not within the Board's jurisdiction. City Liaison Crespo-Tabak stated that that she received Mr. Gentles' request to appear before the Board, reviewed it with legal counsel and responded accordingly. Mr. Gentles is covered by the IAFF collective bargaining unit and it is not appropriate for the Personnel Board to entertain his concerns.

Deputy Attorney Papy further explained that Mr. Gentles had filed grievances on the matter he was trying to bring before the Board, pursuant to the terms and conditions of the IAFF collective bargaining agreement. Furthermore, Mr. Gentles' entered into a legally binding contract with the City and the Personnel Board has no jurisdiction over the terms and conditions of that contract. Chairperson Paez declined his request to be heard. Ms. Khaghan Danial asked Mr. Gentles if he had been represented by counsel when he entered into the agreement with the City and when he stated he had, she too agreed his matter should not be before the Personnel Board.

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Marlenis Smart, Fire Department

Ms. Smart also approached to be heard by the Personnel Board. City Liaison Crespo-Tabak stated that Ms. Smart had been an employee of the Fire Department, whose employment with the city was terminated. She has an appeal process through the collective bargaining agreement because she is covered by the IAFF; therefore, it is not appropriate for her matter to be before the Personnel Board and that she had so been informed.

Senior Assistant City Attorney Rosenwald stated that this case was similar to Mr. Gentles' and that the Personnel Board did not have jurisdiction. City Liaison Crespo-Tabak explained that Ms. Smart is covered by the IAFF and when disciplinary action is taken against one of its members there is a contractual appeal procedure available. Ms. Smart was dismissed from city service and has the right to file a grievance and go to arbitration.

Ms. Smart stated she has been dismissed and two days later had received a performance evaluation with a 93.60 overall rating. She said she had sued the city for sexual harassment and retaliation and that the matter *"Is under the Federal Courthouse under the 11th Circuit under Appeals Review"*. She further stated she had been terminated for conduct unbecoming based on the Chief's sole discretion to do so.

She has a retaliation lawsuit against the Fire Department pending. Vice Chairperson Khaghan Danial suggested to Ms. Smart that she seek legal counsel. Ms. Smart stated that the union attorney had informed her she could not appear before the Personnel Board with an attorney.

Deputy Attorney Papy stated that in 2006 or 2007 the City and unions had agreed that the Personnel Board would not hear disciplinary appeals from employees covered by a collective bargaining agreement. In the case of the IAFF, there is an arbitration procedure available as well as the hearing examiner process which is similar to arbitration but follows the same rules as the Personnel Board. Chairperson Paez agreed the Personnel Board did not have jurisdiction and did not allow her to address the Board.

Recommendation made by Vice Chairperson Khaghan Danial, seconded by Chairperson Paez.

In the future, the Human Resources Director is to advise the Chair in advance of a meeting when a request to address the Board is denied because the issue is not within the Board's jurisdiction.

Associate Member Pincus requested clarification regarding the Personnel Board's role hearing grievances. Deputy Attorney Papy explained that the Personnel Board has limited jurisdiction and under state law. When it comes to employees covered by collective bargaining units, the respective collective bargaining agreements control the employer/employee relationship.


Associate Member Pincus further requested the definition of control. Deputy Attorney Papy explained that once a collective bargaining agent is certified, the City is required by state law (Public Employees' Relations Commission [PERC]) to recognize the union as the employee's sole representative. The City and five collective bargaining agents that represent most classified employees negotiate a contract every three years. That document is what controls the relationship between the individual and the City of Miami Beach. In some circumstances, the Personnel Board does have jurisdiction over performance evaluation appeals.

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Vice Chairperson Khaghan Danial stated that she respected the legal opinion provided but that the Chairperson must be apprised of any requests to appear before the Board that are denied.

Next scheduled Personnel Board meeting: Friday, June 21, 2013.

With all in favor, the meeting adjourned at 9:50 AM.


Sylvia Crespo-Tabak
Human Resources Director